Supreme Court, U.S.
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No. 96-1916

IN THE

Supreme Court of the United States

OCTOBER TERM, 1997

QUINN-L CAPITAL CORPORATION, *et al.*,
Petitioners,

v.

ROYAL INSURANCE COMPANY OF AMERICA and
ROYAL LLOYDS OF TEXAS,
Respondents.

On Petition for a Writ a Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF FOR THE RESPONDENTS IN OPPOSITION

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QUESTION PRESENTED

Did the district court abuse its discretion in denying petitioners' motion under Federal Rule of Civil Procedure 60(b)(5) for relief from a now five-year-old judgment — which had been affirmed by the court of appeals and which this Court had declined to review — where petitioners based their motion on an issue of fact that the district court resolved against them and where petitioners failed to demonstrate the requisite intervening change in fact or law?

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BRIEF FOR THE RESPONDENTS IN OPPOSITION

The petition for certiorari in this case represents a last desperate gasp by petitioners. Respondents prevailed in this insurance coverage dispute five years ago, when the district court entered a final declaratory judgment and enjoined petitioners from relitigating any issues resolved by that judgment. The Fifth Circuit affirmed, in full, four years ago. *Royal Ins. Co. v. Quinn-L Capital Corp.*, 3 F.3d 877 (5th Cir. 1993) ("*Royal II*").[1] The Fifth Circuit denied rehearing and rehearing *en banc*, and this Court denied certiorari. 511 U.S. 1032 (1994).

More than a year after the denial of certiorari, petitioners moved in the district court to reopen the judgment under Fed. R. Civ. P. 60(b)(5). They argued that the continuing application of the injunction was inequitable because "the [district] [c]ourt never had diversity jurisdiction" to enter it in the first place. (Pet. App. 5 (citing Defendants' Rule 60(b)(5) Motion at 12)). They based this argument on respondents' earlier failure to join a supposed "real party in interest" whose presence would have destroyed diversity. The district court rejected petitioners' motion (Pet. App. 9), and the Fifth Circuit affirmed by summary ruling (Pet. App. 1).

This second petition for certiorari, like the first, has no merit and should be denied. Petitioners do not seriously attempt to satisfy the accepted grounds for review in this Court: They do not demonstrate any conflict in the lower courts; nor do they establish the existence of any important legal question with application beyond this case. At most, petitioners contend that the courts below misapplied this Court's precedents to the peculiar facts of this case, which is not a sufficient reason to justify a grant of certiorari. In any event, the lower courts' decisions are fully consistent with this Court's precedents, which require a party to establish "a significant change either in factual conditions or in law" in order to obtain relief from judgment under Rule

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[1] Respondents will cite to the Fifth Circuit's 1992 ruling in this case, 960 F.2d 1286, as "*Royal I*" and its 1993 ruling, 3 F.3d 877, as "*Royal II*." These denominations conform to those utilized by the lower courts in this case.

60(b)(5). *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. 367, 384 (1992). As the district court found and the court of appeals affirmed, petitioners failed to demonstrate any change of fact or law, much less a significant one. Accordingly, the Court's review plainly is not warranted.

STATEMENT OF THE CASE

Respondents will divide their statement of the case into two parts. First, respondents describe the various judicial proceedings that gave rise to the declaratory judgment and permanent injunction that petitioners seek to reopen. These proceedings have been aptly described by the Fifth Circuit as a "tangled web of litigation," in which petitioners "collusively" sought through suits in state court to "evade" federal court jurisdiction in order to impose massive liability on the respondent insurance companies. *Royal Ins. Co. v. Quinn-L Capital Corp.*, 960 F.2d 1286, 1301 (5th Cir. 1992) (*"Royal I"*). Second, respondents focus on petitioners' Rule 60(b)(5) motion, which the district court and Fifth Circuit correctly rejected.

THE INITIAL FEDERAL COURT LITIGATION. In the 1970s and 1980s, the Quinn-L entities (collectively, "Quinn-L") organized and promoted a series of real estate limited partnerships. By 1987, the real estate ventures had failed. *Royal I*, 960 F.2d at 1289. Some 157 investors (collectively, "the investors") then filed twenty-six separate actions against Quinn-L in the U.S. District Court for the Northern District of Texas. *Id.*

Respondents Royal Insurance Company of America and Royal Lloyds of Texas (collectively, "Royal") were Quinn-L's liability insurers. When Quinn-L demanded that Royal assume its defense of the investors' suits, Royal did so, although under an express reservation of its right to contest coverage. *Id.* Royal exercised that right in May 1988 by filing a declaratory judgment action against Quinn-L in the Northern District of Texas. The investors' suits, together with Royal's coverage action, were consolidated and assigned to Judge Barefoot Sanders. *Id.*

While the various actions were pending, the investors conducted settlement negotiations with Quinn-L and its principal, S. Mark Lovell, who had by that time declared personal bankruptcy. The investors then moved in Royal's coverage action to substitute their counsel for Quinn-L's, representing that they had "reached an agreement in principle for settlement" of the Quinn-L litigation. *Id.* Pursuant to the settlement, Quinn-L would assign to the investors its rights, if any, against Royal. The investors also entered into a formal settlement with Lovell, who agreed to "cooperate" with them in their litigation against Quinn-L. *Id.*

Between April and September 1989, the district court entered several orders bringing the litigation before it to a close. In April, the court granted Royal summary judgment in the declaratory judgment action, holding that Royal had no duty to defend or indemnify Quinn-L against the claims asserted by the investors. A final declaratory judgment was entered in early September, and was not appealed. *Id.* at 1289-90. For their part, the investors moved in August to dismiss all of their pending suits against Quinn-L, again representing to the district court that they had "reached an agreement in principle for settlement of [their] claims." The court granted the motion, dismissing the investors' federal claims with prejudice and the state-law claims without prejudice. *Id.* at 1290.

THE INITIAL STATE COURT LITIGATION: "THE DALLAS ACTION." Two weeks after the district court dismissed the state-law claims against Quinn-L, the investors refiled them in state court in Dallas (hereinafter "the Dallas action"). *Id.* Once again, Quinn-L demanded that Royal defend it and, once again, Royal agreed to do so under a reservation of rights. Royal then retained attorney Coyt Randall Johnston to represent Quinn-L. Johnston filed a general denial to the complaint. *Id.*

But Lovell, on behalf of Quinn-L, refused to accept Royal's offer of a defense unless Royal acknowledged that Quinn-L's liability policies covered the investors' claims. Royal repeatedly notified Lovell and his personal counsel that they should retain substitute counsel for Royal in the Dallas action. *Id.*

In May 1990, while Johnston's motion to withdraw from the case was pending and no substitute counsel had appeared for Quinn-L, the investors filed 600 requests for admissions against Quinn-L. Johnston answered the requests in order to prevent them from being admitted by default. *Id.*

In late June, the investors moved to strike the answers filed by Johnston on the ground that they were prepared without consulting Quinn-L. *Id.* Although Lovell was informed of this motion, he still did not obtain counsel for Quinn-L, and did not take any action to ratify or amend the answers filed by Johnston. The motion therefore went unopposed. Ten days later, the court granted it, deeming the requests "admitted." *Id.*

When the case was called for trial in August, Quinn-L was still not represented by counsel. Based on nothing more than the 600 deemed admissions and their own calculation of damages, the investors (whose alleged out-of-pocket losses were $16 million) obtained a default judgment of $741 million. *Id.*

GENESIS OF THIS FEDERAL COURT ACTION AND THE PARALLEL "BROWNSVILLE" STATE COURT ACTIONS. In March 1990, while the Dallas action was pending, Royal had filed an action in federal district court to enforce the September 1989 declaratory judgment that it had no obligation to defend or indemnify Quinn-L against the investors' claims. *Id.* at 1291. Quinn-L filed an answer in August, immediately after the entry of the default judgment in the Dallas action. Quinn-L both disputed the coverage issue and raised a variety of affirmative defenses, which asserted that Royal and Johnston had tortiously mishandled the Dallas action and thus were liable for the $741 million judgment. *Id.*

On September 4, 1990, Quinn-L (acting through Lovell) assigned to the investors whatever claims it had against Royal. *Id.* That same day, the investors filed a second state court suit — this one in Brownsville, Texas — seeking to hold Royal liable for not merely the $741 million default judgment against Quinn-L, but also for treble damages of approximately $2.2 billion. *Id.* & n.5. The investors asserted the same tort claims that they had

raised as defenses to Royal's pending federal court action. *Id.* A separate action by the investors against Royal, filed in Brownsville on the same day, sought a declaratory judgment that Royal was liable for the $741 million judgment in the Dallas action. *Id.*

ROYAL'S FEDERAL COURT PRELIMINARY INJUNCTION: "ROYAL I." Also on September 4, Royal moved to join the investors as defendants in the federal court action. *Id.* Royal explained to the court that, as a result of the Dallas action, the investors had become judgment creditors of Quinn-L, and therefore were "persons to be joined if feasible" under Fed. R. Civ. P. 19(a). (R. 129-47 [Vol. 1]). The court granted the motion. (R. 275-76 [Vol. 2]).

In the following week, petitioners filed and Royal opposed a series of attempts to dismiss the federal court action. First, Quinn-L and one of the investors, a partnership known as "Professional Investors," moved to dismiss the action for lack of diversity jurisdiction. They argued that three partners in Professional Investors were citizens of the same states as Royal. (R. 277-353 [Vol. 2]). The following day, Royal voluntarily dismissed Professional Investors as a defendant under Fed. R. Civ. P. 41(a)(1). (R. 444-45 [Vol. 2]).

Quinn-L and Professional Investors then moved to dismiss on the ground that Professional Investors was an "indispensable" party to the action under Fed. R. Civ. P. 19(b), and thus that its voluntary dismissal under Rule 41(a) could not preserve jurisdiction. (R. 446-63 [Vol. 2]). Royal countered that Professional Investors was not indispensable because its interests would be represented by Quinn-L and the 156 other investors, who remained parties to the action. The district court agreed with Royal and denied petitioners' motion to dismiss. (R. 526 [Vol. 3]).

On November 30, 1990, the district court granted Royal interim relief, preliminarily enjoining petitioners from prosecuting the Brownsville actions. *Royal Ins. Co. v. Quinn-L Capital Corp.*, 759 F. Supp. 1216 (N.D. Tex. 1990). Petitioners appealed the

preliminary injunction to the Fifth Circuit, which affirmed the district court's exercise of jurisdiction, as well as that part of its injunction barring relitigation of Royal's coverage and indemnity obligations to Quinn-L. *Royal I*, 960 F.2d at 1300. The Fifth Circuit reversed that part of the injunction barring state court litigation of the investors' tort claims arising out of the Dallas action. *Id.*

ROYAL PREVAILS ON THE MERITS: "ROYAL II." In December 1991, while the preliminary injunction was on appeal, the district court granted Royal summary judgment both as to the coverage issue and as to petitioners' affirmative defenses, which claimed that Royal and Johnston had acted wrongfully in their defense of the Dallas action. *Id.* The court entered a final declaratory judgment in July 1992 on both the coverage issue and the affirmative defenses. The court also entered a permanent injunction barring petitioners from relitigating any of the claims and issues that it had decided. (R. 2917-34 [Vol. 13]). Petitioners appealed.

On September 27, 1993, the Fifth Circuit affirmed, in full, the district court's declaratory judgment and permanent injunction. *Royal II*, 3 F.3d at 882-83. In so doing, the court of appeals expressly rejected petitioners' challenge to the district court's exercise of diversity jurisdiction. Petitioners had argued on appeal that because Royal was required under state law to have a Texas agent, Royal was a citizen of the same state as some of the investors. *Id.*

Petitioners' suggestion of rehearing *en banc*, which was also treated as a petition for rehearing, was denied. Petitioners then sought certiorari from the Fifth Circuit's decision, presenting as their first question whether diversity jurisdiction existed in this case. *See* Petition for Certiorari, *Quinn-L Capital Corp. v. Royal Ins. Co.*, at i (question 1) (filed Feb. 3, 1994) (No. 93-1331). The petition was denied as well. 511 U.S. 1032 (1994).

THE PRESENT PROCEEDINGS: THE PETITIONERS' MOTION FOR RELIEF FROM THE PERMANENT INJUNCTION UNDER RULE 60(b)(5): "ROYAL III." Fifteen months after this Court denied their petition for certiorari, petitioners moved for relief from the permanent injunction under Rule 60(b)(5). That Rule provides that "upon such terms as are just, the court may relieve a party . . . from a final judgment. . . [if] it is no longer equitable that the judgment should have prospective application." Petitioners, "for the first time in their reply" on the Rule 60(b)(5) motion, argued that Royal should have named a supposed "Partnership/Unincorporated Association" as a defendant in the action. (Pet. App. 6 (citing Defendants' Reply at 3-6)).[2] Specifically, petitioners alleged that Quinn-L's assignment of its rights against Royal to the investors implicitly created a "partnership" or "unincorporated association" because none of the investors individually owned or held Quinn-L's rights. But the investors could point to nothing expressly creating any such entity. According to petitioners, this "Partnership/Unincorporated Association," not Quinn-L or the individual investors, was the real party in interest that Royal should have named as a defendant. Petitioners further contended that diversity jurisdiction had always been lacking in the action because the citizenship of some members of this entity was not diverse from Royal's. (*Id.*).

The district court denied petitioners' motion on three independent grounds. First, petitioners were wrong as a matter of fact in asserting that the alleged "Partnership/Unincorporated Association" of all Quinn-L investors existed: "[t]here is no partnership here; no language in Quinn-L's assignment of rights

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[2] In their opening brief in the district court, petitioners also sought Rule 60(b)(5) relief on the same theory that they had raised in the district court years before: that the Professional Investors partnership was an indispensable party that destroyed diversity jurisdiction. (Pet. App. 5). The district court rejected this theory. (*Id.* at 6). Because petitioners did not raise that argument in the Fifth Circuit or in this Court, respondents do not address it here.

to the investors suggests that the 'Partnership/UA' was formed . . . ." (Pet. App. 7).

Second, petitioners had identified no changed circumstances justifying relief under Rule 60(b)(5). The issue of subject matter jurisdiction was extensively litigated prior to final judgment. (Pet. App. 6-7). Yet, petitioners had never raised any issue involving the alleged "Partnership/Unincorporated Association," even though petitioners now claimed that this entity was formed in September 1990, nearly two years before the entry of final judgment. (Pet. App. 8). "Clearly," added the court, petitioners "should have, and could have, raised the 'Partnership/UA' issue long ago." (*Id.*)

Third, even aside from whether petitioners' arguments were correct on the merits and whether a change in law or fact had occurred since 1992, petitioners' Rule 60(b)(5) motion failed because it "was not timely filed." (Pet. App. 8). The only ground offered by petitioners for waiting until 1995 to raise an issue that they could have raised as early as 1990 was the Fifth Circuit's decision in *Bankston v. Burch*, 27 F.3d 164 (5th Cir. 1994), which simply held, consistent with existing Fifth Circuit authority, that a partnership is a necessary party to a derivative suit brought on its behalf. As the court explained, *Bankston* was inapposite because, contrary to petitioners' assertions, no "partnership" or "unincorporated association" existed here. Moreover, *Bankston* was decided more than a year before petitioners filed their motion, and thus could not justify their delay. (Pet. App. 7).

On appeal, a unanimous panel affirmed in a one-paragraph *per curiam* ruling that "is not precedent" outside this case. (Pet. App. 1 n.* (citing Fifth Cir. R. 47.5.4)). The panel found that the district court had not "abused its discretion in denying appellants' Rule 60(b)(5) motion for relief from judgment," and it "affirm[ed] on essentially the basis articulated by the district court." (Pet. App. 2).

REASONS FOR DENYING THE WRIT

The petition for certiorari should be denied. Petitioners fail to demonstrate that this case satisfies any of this Court's criteria for plenary review. They do not establish that the decision below conflicts with any decision of any other lower court. Nor do they seek to explain how the issue presented for review could have any significance beyond this particular case. Moreover, while petitioners assert that the decision below conflicts with two decisions of this Court, the conflict is an imagined one. It is premised on a disputed issue of fact that the district court expressly resolved against petitioners. This Court does not grant certiorari to revisit such factual disputes. In any event, the decision below is fully consistent with Rule 60(b)(5), as construed by this Court. Petitioners have not demonstrated what the Court has recognized to be the essential prerequisite to Rule 60(b)(5) relief: a significant change in law or fact since the entry of judgment. For this reason alone, the district court properly exercised its discretion under Rule 60(b)(5) in denying petitioners' motion to reopen the judgment and injunction in this case.

1. Petitioners do not seriously dispute that the lower courts' disposition of the Rule 60(b)(5) motion involved nothing more than a fact-specific application of well-settled law. (*See* Pet. 19 (identifying "the issues presently before this Court" as being whether the alleged "unincorporated association" of all Quinn-L investors was "the real party to the controversy" and was "non-diverse" with Royal)). They do not, and cannot, identify any disagreement among the lower federal courts on any legal issue arguably implicated by this case. They likewise do not, and cannot, show that the appellate panel's unpublished *per curiam* affirmance, which is without precedential effect under the Fifth Circuit's own rules (Pet. App. 1-2), has any significance beyond this case.

2. Petitioners do contend, albeit erroneously, that the decision below conflicts with this Court's decisions in *Carden v. Arkoma Associates*, 494 U.S. 185 (1990), and *Navarro Savings Association v. Lee*, 446 U.S. 458 (1980). Those cases reflect the

well-settled rule that the citizenship of a partnership or an unincorporated association is determined by the citizenship of its members — a rule that has never even been questioned by Royal or by the courts below at any point in this litigation.

Carden and *Navarro* are inapplicable to this case, however, for a very simple reason: the district court found as a matter of fact, and the court of appeals affirmed, that petitioners' so-called "Partnership/Unincorporated Association" of all Quinn-L investors never actually existed. (Pet. App. 7 ("[t]here is no partnership here; no language in Quinn-L's assignment of rights to the investors suggests that the 'Partnership/UA' was formed")). It was merely a belated invention of petitioners' counsel to attempt to reopen a judgment that had long since become final. (*Id.* at 6 (noting that petitioners never alleged the existence of any such "Partnership/Unincorporated Association" until September 1995, which was "more than five years" after that entity supposedly was created)). There was thus no such "partnership" or "unincorporated association" whose citizenship could be determined under the rule recited in *Carden* and *Navarro*.

The district court's factual finding as to the non-existence of the "Partnership/Unincorporated Association" was dispositive of petitioners' Rule 60(b)(5) motion. This Court does not grant certiorari to reconsider assertedly "erroneous factual findings or the misapplication of a properly stated rule of law." Sup. Ct. R. 10; *see also* ROBERT L. STERN ET AL., SUPREME COURT PRACTICE § 4.14, at 189 (7th ed. 1993) ("The Supreme Court will usually deny certiorari when review is sought of a lower court decision which turns solely upon an analysis of the particular facts involved, or upon the construction of particular contracts or written instruments.").

3. In any event, even aside from whether the alleged "Partnership/Unincorporated Association" existed or was a necessary party whose presence would destroy diversity, the lower courts' rejection of petitioners' Rule 60(b)(5) motion was consistent with this Court's precedents. As this Court recently reiterated, the party seeking relief from a judgment or injunction

under Rule 60(b)(5) must "show 'a significant change either in factual conditions or in law.'" *Agostini v. Felton*, No. 96-552, slip op. at 8 (June 23, 1997) (quoting *Rufo v. Inmates of Suffolk County Jail*, 502 U.S. at 384); *see also* 11 CHARLES A. WRIGHT ET AL., FEDERAL PRACTICE & PROCEDURE, *Civil* § 2863, at 340 (2d ed. 1995) (Rule 60(b)(5) requires "some change in conditions that makes continued enforcement inequitable"). This requirement reflects the practice in the federal courts even before the enactment of the Federal Rules. As the Court, speaking through Justice Cardozo, explained in *United States v. Swift & Co.*, 286 U.S. 106, 119 (1932):

> We are not framing a decree. We are asking ourselves whether anything has happened that will justify us now in changing a decree. The injunction, whether right or wrong, is not subject to impeachment in its application to the conditions that existed at its making. We are not at liberty to reverse under the guise of readjusting.

In this case, petitioners have not called the Court's attention to any change in fact or law, much less a "significant" one, subsequent to the district court's entry of final judgment in 1992. The law on which petitioners rely — principally that recited in *Carden* and *Navarro* — was already well-settled by 1992. Indeed, in raising other challenges to the district court's exercise of diversity jurisdiction in their 1991 and 1993 appeals to the Fifth Circuit, petitioners relied extensively on *Carden*. *See* Br. for Appellants, *Royal I*, at 18; Br. for Appellants, *Royal II*, at 23. They invoked both *Carden* and *Navarro* in their earlier petition for certiorari. *See* Petition for Certiorari, No. 93-1331, at 13-16.

Similarly, the fact on which petitioners rely — the alleged "Partnership/Unincorporated Association" of all Quinn-L investors — existed, if at all, well before 1992. According to petitioners' own theory, the "Partnership/Unincorporated Association" was created in September 1990, when Quinn-L assigned its rights against Royal to the investors. (Pet. 7 ("On September [illegible], 1990, ... only the unincorporated association of the investor group owned Quinn-L's assigned rights against

Royal.")). Accordingly, because "neither the law supporting the [district court's] original decision in this litigation nor the facts have changed, there [is] no need to decide the propriety of a Rule 60(b)(5) motion." *Agostini*, slip op. at 9.[3]

The decision below is correct, and thus does not merit review, for yet another reason. The lower courts held that petitioners failed to satisfy the requirement that Rule 60(b)(5) motions "'be made within a reasonable time.'" (*See* Pet. App. 8-9 (quoting Fed. R. Civ. P. 60(b)). As noted above, petitioners did not file their Rule 60(b)(5) motion until more than three years after the entry of judgment. The motion was based on an argument that, as explained above, petitioners could have made, but did not, years before the entry of judgment. Both the facts and the law were settled at the time of the original judgment, and petitioners offer no explanation to this Court for their delay in seeking relief.

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[3] No authority suggests that the "significant change" requirement applies differently depending on whether the Rule 60(b)(5) motion is based on an alleged defect in subject-matter jurisdiction. Indeed, in considering motions under Rule 60(b)(4) to reopen a judgment on the ground that it is "void," the circuits have consistently held that a district court's erroneous determination of subject-matter jurisdiction does not render a judgment "void" and thus subject to being reopened. *See, e.g.*, *Picco v. Global Marine Drilling Co.*, 900 F.2d 846, 850 (5th Cir. 1990); *Lubben v. Selective Serv. Sys. Local Bd. No. 27*, 453 F.2d 645, 649 (1st Cir. 1972). A party should not be able to accomplish under Rule 60(b)(5) what it cannot accomplish under Rule 60(b)(4): the reopening of a final judgment based on allegedly mistaken determination of subject-matter jurisdiction.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be denied.

Respectfully submitted,

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